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October 19, 2011

## **BY E-FILE**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

Office of Proceedings  
Oct 19 2011  
Part of  
Public Record

Re: Canexus Chemicals Canada L.P. v. BNSF Railway Company,  
Docket No. 42131 and Finance Docket No. 35524

Dear Ms. Brown:

281 32

231 131

Enclosed for filing in the above-referenced docket are an original and ten copies of Union Pacific's Reply to BNSF Railway Company's Petition to Vacate Emergency Service Order.

Please indicate receipt and filing by date-stamping the enclosed extra copy and returning it to our messenger.

Thank you for your assistance.

Sincerely,



Michael L. Rosenthal  
Counsel for Union Pacific Railroad  
Company

Enclosure

cc: Thomas Wilcox  
Samuel M. Sipe, Jr.  
Terence M. Hynes

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CANEXUS CHEMICALS CANADA L.P.,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. 42131
	)	Finance Docket No. 35524
BNSF RAILWAY COMPANY,	)	
	)	
Defendant.	)	
	)	

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October 19, 2011

BEFORE THE  
SURFACE TRANSPORTATION BOARD

CANEXUS CHEMICALS CANADA L.P.,	)	
Complainant,	)	
v.	)	Docket No. 42131
BNSF RAILWAY COMPANY,	)	Finance Docket No. 35524
Defendant.	)	

**UNION PACIFIC RAILROAD COMPANY’S REPLY  
TO BNSF RAILWAY COMPANY’S PETITION  
TO VACATE EMERGENCY SERVICE ORDER**

Union Pacific Railroad Company (“UP”) agrees with BNSF Railway Company (“BNSF”) that the Board should vacate the emergency service order imposed on BNSF and UP in the Board’s decision served October 14, 2011. UP has no objection to maintaining the status quo to permit the briefing the Board seeks, but the Board’s exercise of its emergency service powers in this proceeding will cause confusion and unnecessary litigation in the future. The Board may not impose an emergency service order to maintain the status quo while it resolves a commercial dispute. An emergency service order constitutes extraordinary relief that is appropriate only to remedy a failure of traffic movement.

The portion of the Board’s emergency service order directed at UP has no valid basis in fact or law. It requires UP to transport Canexus’s chlorine from an interchange in Kansas City, Missouri, to final destinations in Illinois, Arkansas, and Texas. Such an order is wholly unnecessary. UP and Canexus are currently parties to a contract under which UP is obligated to provide that service. Nothing in the record indicates that UP is unwilling to

continue providing service under the parties' contract. Accordingly, the Board had no basis for directing an emergency service order at UP.

The portion of the Board's order directed at BNSF also appears to be unnecessary, especially in light of BNSF's petition. In its petition, BNSF affirms that it is willing for the time being to continue carrying Canexus's traffic to Kansas City. (BNSF Petition at 2.) The petition also makes clear that this case involves a commercial dispute, not a service emergency. BNSF does not reveal the details of its discussions with Canexus, but the petition shows that there are commercial terms under which BNSF is willing to provide Canexus with service to Kansas City. (*Id.* at 2, 4-5.) BNSF's petition further shows that Canexus could obtain service to Kansas City via Canadian Pacific Railway Company ("CP"), if Canexus and CP can agree to commercial terms. (*Id.* at 5.) Board precedent establishes that emergency service orders are to be used in true service emergencies, and not as a means of addressing commercial disputes. *See, e.g., Albemarle Corp. – Alternative Rail Service – Line of the Louisiana & North West R.R.*, STB Finance Docket No. 34931, slip op. at 4 (STB served Oct. 6, 2006); *Keokuk Jct. Ry. – Alternative Rail Service – Line of Toledo, Peoria & Western Ry.*, STB Finance Docket No. 34397, slip op. at 6 (STB served Oct. 31, 2003).<sup>1</sup>

To be fair, Canexus did not ask the Board to issue an emergency service order. Canexus recognized that it had entered into a binding contract with UP. That contract would apply to traffic that UP interchanges at Kansas City with BNSF or CP or some other carrier.

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<sup>1</sup> It is unnecessary for purposes of this pleading to address the other arguments raised by BNSF. UP will address several other issues raised by the Board's order, including the Board's indication that it will apply a different standard for issuing emergency service orders to situations involving chlorine and other highly toxic materials, in its opening statement under the procedural schedule established for this case.

And, UP expresses no view on how the Board should resolve commercial disputes between Canexus and other carriers.

Respectfully submitted,

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October 19, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October 2011, I caused a copy of the foregoing document to be served by email and by first-class mail, postage prepaid, on:

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